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Supreme Court, U.S.
FILED
FEB 8 2001
OFFICE OF THE CLERK

No. 00-1209

IN THE

Supreme Court of the United States

DAVID LAWRENCE SOLOMON,

Petitioner,

v.

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

REPLY BRIEF AND RULE 11 MOTION

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February 8, 2001

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13 pp

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REPLY BRIEF AND RULE 11 MOTION

I. Key Facts On The Testimony And Evidence Were Omitted By The Brief In Opposition To Mislead This Court To An Erroneous Conclusion. This Shows How Judicial Staff Enable The Spread of Unconstitutional Abuse of Judicial Power In The States Highest Courts.

Key facts on the testimony and evidence were omitted by the brief in opposition to mislead this Court to an erroneous conclusion. This shows how judicial staff cooperate to defend and enable the spread of unconstitutional abuse of judicial power[1] in the states highest courts flowing from *Solomon*[2]. Judicial staff must insist *Solomon* be checked in accord with the law of the constitution as applied in *Ruffalo*[3], section 691[4],

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[1] The attorney was found innocent of *all* of the nearly *one thousand* charges by the factual findings and *suspended indefinitely* anyway. Former Judges of the highest courts of Florida and New York testified the suspension violated the constitution. Florida's highest court admitted in writing that the suspension violated the constitution 85 days after it denied rehearing. Despite these facts, Florida's highest court remains unwilling to vacate the suspension that it admitted violates the constitution.

[2] *Florida Bar v. Solomon*, 711 So.2d 1141 (Fla.1998).

[3] *In re Ruffalo*, 390 U.S. 544 (1968).

[4] N.Y.C.R.R. Section 691.

Pulliam[5], and section 1983[6]. In contrast, New Hampshire Supreme Court Clerk Zibel refused to cooperate and enable unconstitutional abuse of judicial power by his state's highest court. Clerk Zibel's honor and courage caused the impeachment of New Hampshire Chief Justice Brock and immediate judicial reforms. One reform before the New Hampshire Legislature is an administrative agency that is not controlled by judges to police the *state's highest court in particular* and judiciary in general. A state's highest court in particular, and a state's judiciary in general are often unwilling to self police judges on the *state's highest court in particular.* The unusual procedural posture of this case shows that judges on one state's highest court are also often unwilling to self police judges on a different state's highest court in the rare circumstances when that is possible.

Honorable judicial staff do as Clerk Zibel did, and insist that unconstitutional abuse of judicial power by judges on the states highest courts be checked in accord with the law, and do not cooperate to defend and enable unconstitutional abuse of judicial power by chief justices and justices on the states highest courts. Judicial staff who cooperate to defend and enable unconstitutional abuse of judicial power by chief justices and justices on the states highest courts unwittingly join this affront to our honorable judiciary and its place in our democracy.

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[5] *Pulliam v. Allen,* 466 U.S. 522 (1984).

[6] 42 U.S.C. 1983.

Solomon was an unconstitutional abuse of judicial power by judges on Florida's highest court. The law of the constitution as applied in *Ruffalo,* section 691, *Pulliam,* and section 1983 was intended to remedy unconstitutional abuse of judicial power, even by judges on the states highest courts. Fellow judges in Florida, New York and the District of Columbia enable the spread of the unconstitutional abuse of judicial power by fellow judges on Florida's highest court flowing from *Solomon* when they do not insist *Solomon* be checked in accord with the law. The petition's one reason to grant certiorari is to prove laws where judges self police fellow judges on *the states highest courts in particular,* are viable. These laws are viable only if *this Court* is willing to self police fellow judges on the highest courts of Florida and New York, when fellow judges on the highest courts of Florida, New York and the District of Columbia were unwilling to do so. Conversely, if this Court declines certiorari, it will have proven laws where judges self police fellow judges on the states highest courts in particular, are not viable. Certiorari denied invites Congress, state legislatures and voter referendums to create an administrative agency not controlled by this Court, the states highest courts in particular, or the judiciary in general, to police the states highest courts in particular and judiciary in general. If this Court is unwilling to stop the spread of unconstitutional abuse of judicial power by the states highest courts in particular, and the judiciary in general, perhaps an agency not controlled by judges can to do so.

The brief in opposition does not address the one reason given to grant certiorari. The section 691 defenses are the tests applied in New York to a foreign judgment to determine whether a foreign judgment violated the constitution. The brief in opposition quoted the section 691 defenses. The brief in opposition then omitted key facts on the testimony and evidence to mislead this Court to conclude that no section 691 defenses were raised or proven. The section 691 defenses that determine whether a foreign judgment violated the constitution are whether guilt in the foreign judgment was based on,

> (1) a procedure that lacked constitutional notice of the charges, *or*
>
> (2) infirm proof.

Solomon held[7] that guilt based on matters that were never charged *did* provide constitutional notice of the charges. The brief in opposition did not discuss or defend *Solomon's* holding. The New York record included *Solomon's* holding. The brief in opposition misleadingly concluded *only because it omitted key facts,* that section 691 defenses were not raised or proven. Rule 11 is fairly

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[7] Please see page 23a of the petition where *Solomon* held,

> Solomon contends that the referee violated his due process rights by recommending that he be found guilty of specific instances of misconduct that were *not charged* in the Bar's complaint. *We disagree.* [emphasis supplied].

imposed when key facts are omitted to mislead this Court to an erroneous conclusion.

II. Clear Conflict With *Ruffalo*.

Even with no testimony and no evidence, Solomon's clear conflict with Ruffalo established the section 691 defense of a lack of constitutional notice of the charges. In 1968, *Ruffalo* held that guilt based on matters that were never charged did *not* provide constitutional notice of the charges. In 1998, *Solomon* held exactly the opposite, that guilt based on matters that were never charged *did* provide constitutional notice of the charges. In 2000, the law required New York's highest court to apply the section 691 defenses to *Solomon*. New York's highest court chose not to obey the law. There is no other way to explain how New York's highest court held the notice *was* constitutional in *Solomon*. Furthermore, the New York referee's report stated that the unopposed expert *testimony* by former judges of the highest courts of Florida and New York was that *Solomon* violated the constitution because guilt was based on matters never charged *and* on infirm proof. The New York referee's report reprinted on page 9a of the petition summarized former Supreme Court of Florida Justice Karl's testimony as follows,

> It was his opinion that . . . the [Florida] Supreme Court made findings of guilt and asserted punishment for matters that were not properly charged by the bar, and that there

> [*sic*] two findings of guilt not supported by the evidence.

The New York referee's report reprinted on page 10a of the petition quoted former New York Court of Appeals Judge Titone's testimony as follows,

> "First of all, I don't thing he had notice . . . I don't think he ever had notice of what they were doing."

The New York referee's report reprinted on page 8a of the petition stated that the 1998 petitions for a writ of certiorari and rehearing filed in this Court[8] were admitted in *evidence* with no objection in the New York hearing. These two 1998 documents discussed in detail that *Solomon* violated the constitution because of (1) an admitted lack of notice of the charges and (2) *all* guilt was based on infirm proof. Please see this 2001 petition, page 11, footnote 11, for a detailed analysis of the New York referee's report.

The brief in opposition misleads this Court because it omitted the key fact that there *was* testimony and evidence on the section 691 defenses. This omitted key fact misleads this Court because this incomplete factual statement misleadingly suggests that there was *no* testimony and *no* evidence on the section 691 defenses. Based on this incomplete statement of the facts, the brief in opposition misleads this Court when it misrepresented that the referee *properly* held that section 691 defenses were not established

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[8] *Solomon v. Florida Bar*, ___ U.S. ___ (1998), 119 S.Ct. 411, USSC case number 98-425.

because[9] there was testimony on the severity of the sanctions. Page three misstated by omission, the testimony, as follows,

> Petitioner chose to present two witnesses who testified regarding the severity of the sanctions. Therefore, the Special Referee properly held that Petitioner had not established his defenses . . .

The brief in opposition misleads this Court when it misstated that the *evidence* did not establish section 691 defenses. This misstatement by omission of key facts misleads this Court because it misleadingly suggests there was *no evidence* on the section 691 defenses. Page four misstated by omission, the evidence, as follows,

> Based on all the *evidence* presented to the Court, the Appellate Division, Second Department rendered a decision imposing discipline. . . . The Petitioner failed to establish his defenses at the hearing. [emphasis supplied].

The New York referee's report stated in the "Hearing" section of the report that there *was* unopposed expert *testimony* by former judges of the highest courts of Florida and New York on the section 691 defenses. The New York referee's report stated in the "Hearing" section of the report that there *was evidence* on the section 691 de-

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[9] The brief in opposition in the middle of page 3 uses the word, "Therefore".

fenses admitted with no objection. It is true that on this record, New York's highest court held the procedure in *Solomon* did provide constitutional notice, and the guilt was not based on infirm proof. This was an unconstitutional abuse of judicial power by New York's highest court to enable the spread of the unconstitutional abuse of judicial power by fellow judges on Florida's highest court. The question presented is whether this Court will grant certiorari to stop the spread of unconstitutional abuse of judicial power by fellow judges on the highest courts of Florida and New York that is flowing from *Solomon*, or decline certiorari to increase the spread of the unconstitutional abuse of judicial power by fellow judges on the highest courts of Florida and New York flowing from *Solomon* . If these four judiciaries--the highest courts of the U.S., Florida, New York and the District of Columbia-- are unwilling to use existing law to stop the spread of unconstitutional abuse of judicial power by fellow judges on the states highest courts flowing from *Solomon*, perhaps an administrative agency to police judges that is not controlled by judges will be created by Congress, state legislatures or voter referendums to stop the spread of unconstitutional abuse of judicial power by judges on the states highest courts flowing from *Solomon*.

III. Stern & Gressman's *Supreme Court Practice* Stated The *Clear Conflict* Standard For Opposing Briefs.

Solomon and New York's highest court held that *Solomon* was constitutional. These holdings

by the highest courts of Florida and New York are in *clear conflict* with *Ruffalo.* Stern and Gressman's *Supreme Court Practice,* Seventh Edition, in "The Opposing Brief" section stated a *clear conflict* standard for opposing briefs filed in this Court. Page 375 stated,

> Where there is a *clear conflict* of decisions, or where the question is undoubtedly of such importance as to need a Supreme Court determination, the respondent may have *no reasonable basis for opposing certiorari.* [emphasis supplied].

An *entire section* in this 2001 petition discussed the *clear conflict* between *Ruffalo, Solomon* and New York's highest court's holding that *Solomon* was constitutional. The brief in opposition's table of citations did not list *Ruffalo* because even the brief in opposition could not contrive to deny *clear conflict* between *Ruffalo, Solomon,* and New York's highest court's holding that *Solomon* was constitutional.

CONCLUSION

Rule 11 sanctions are fairly imposed because, (1) key facts on the testimony and evidence were omitted from the brief in opposition to mislead this Court to an erroneous conclusion, and (2) Stern & Gressman's *clear conflict* standard was violated. Key facts omitted from the brief in opposition show the willingness of judicial staff to defend and enable the spread of the unconstitu-

tional abuse of judicial power by the states highest courts flowing from *Solomon*. Judicial staff must insist that *Solomon* be checked in accord with the law. Certiorari should be granted for the foregoing reasons.

Respectfully submitted,

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